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TAGS: [KTIP](#) [ELAB](#) [KCRM](#) [KPAO](#) [KWMN](#) [PGOV](#) [PHUM](#) [PREL](#) [SMIG](#) [MI](#)  
SUBJECT: MALAWI -- 2009 TIP REPORT: PRESS GUIDANCE AND  
DEMARCHE

REF: A. (A) STATE 59732  
[1](#)B. (B) STATE 005577

[1](#)1. This is an action cable; see paras 5 through 7 and 10.

[1](#)2. On June 16, 2009, at 10:00 a.m. EDT, the Secretary will release the 2009 Trafficking in Persons (TIP) Report at a press conference in the Department's press briefing room. This release will receive substantial coverage in domestic and foreign news outlets. Until the time of the Secretary's June 16 press conference, any public release of the Report or country narratives contained therein is prohibited.

[1](#)3. The Department is hereby providing Post with advance press guidance to be used on June 16 or thereafter. Also provided is demarche language to be used in informing the Government of Malawi of its tier ranking and the TIP Report's imminent release. The text of the TIP Report country narrative is provided, both for use in informing the Government of Malawi and in any local media release by Post's public affairs section on June 16 or thereafter. Drawing on information provided below in paras 8 and 9, Post may provide the host government with the text of the TIP Report narrative no earlier than 1200 noon local time Monday June 15 for WHA, AF, EUR, and NEA countries and OOB local time Tuesday June 16 for SCA and EAP posts. Please note, however, that any public release of the Report's information should not/precede the Secretary's release at 10:00 am EDT on June 16.

[1](#)4. The entire TIP Report will be available on-line at [www.state.gov/g/tip](http://www.state.gov/g/tip) shortly after the Secretary's June 16 release. Hard copies of the Report will be pouched to posts in all countries appearing on the Report. The Secretary's statement at the June 16 press event, and the statement of and fielding of media questions by G/TIP's Director and Senior Advisor to the Secretary, Ambassador-at-Large Luis CdeBaca, will be available on the Department's website shortly after the June 16 event. Ambassador de Baca will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 EDT.

[1](#)5. Action Request: No earlier than 12 noon local time on Monday June 15 for WHA, AF, EUR, and NEA posts and OOB local time on Tuesday June 16 for SCA and EAP posts, please inform the appropriate official in the Government of Malawi of the June 16 release of the 2009 TIP Report, drawing on the points in para 9 (at Post's discretion) and including the text of the country narrative provided in para 8. For countries where the State Department has lowered the tier ranking, it is particularly important to advise governments prior to the Report being released in Washington on June 16.

[1](#)6. Action Request continued: Please note that, for those countries which will not receive an "action plan" with specific recommendations for improvement, posts should draw host governments' attention to the areas for improvement identified in the 2009 Report, especially highlighted in the "Recommendations" section of the second paragraph of the narrative text. This engagement is important to establishing the framework in which the government's performance will be

judged for the 2010 Report. If posts have questions about which governments will receive an action plan, or how they may follow up on the recommendations in the 2009 Report, please contact G/TIP and the appropriate regional bureau.

¶7. Action Request continued: On June 16, please be prepared to answer media inquiries on the Report's release using the press guidance provided in para 11. If Post wishes, a local press statement may be released on or after 10:30 am EDT June

16, drawing on the press guidance and the text of the TIP Report's country narrative provided in para 8.

¶8. Begin Final Text of Malawi,s country narrative in the 2009 TIP Report:

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MALAWI (TIER 2)  
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Malawi is a source, transit, and destination country for men, women, and children trafficked for the purposes of forced labor and sexual exploitation. The incidence of internal trafficking is believed higher than that of transnational trafficking, and practices such as forced labor exist, particularly on tobacco plantations. Children are trafficked primarily within the country for forced labor in agriculture, animal herding, domestic servitude, and to perform forced menial tasks for small businesses. Girls and young women are trafficked internally for forced labor and prostitution at local bars and rest houses. Malawian adults and children are lured by fraudulent offers of employment into situations of forced labor and commercial sexual exploitation in Mozambique, South Africa, and Zambia. In 2008, Malawian men were also trafficked to Tanzania for forced labor in the fishing industry. Children, as well as a smaller number of women, from Zambia, Mozambique, Tanzania, Burundi, and Zimbabwe are trafficked to Malawi for forced labor and commercial sexual exploitation.

The Government of Malawi does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. While the government incrementally improved its efforts to identify victims and bring trafficking offenders to justice, the largely inconsequential punishments meted out to convicted traffickers during the reporting period demonstrated a continued lack of understanding of the seriousness of human trafficking crimes on the part of judicial and other government officials.

Recommendations for Malawi: Provide additional training to judges, prosecutors, and police ) particularly those working near border areas ) on how to identify, investigate, and prosecute trafficking cases utilizing existing laws; pass and enact comprehensive anti-trafficking legislation; expand the existing focus on protecting victims of child labor trafficking to include children exploited in domestic servitude or prostitution; and institute a system to compile data on cases investigated and prosecuted and victims assisted throughout the country.

Prosecution  
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The Government of Malawi,s anti-trafficking law enforcement efforts improved over the last year, though punishments of trafficking offenders remained weak, inconsistent, and highly dependent on the knowledge level of the judges and prosecutors involved in the case. Malawi prohibits all forms of trafficking through existing laws, including the Employment Act and Articles 135 through 147 and 257 through 269 of the Penal Code, though a lack of specific anti-trafficking legislation allows for a range of potentially weak punishments to be imposed on convicted trafficking offenders. Prescribed penalties under the aforementioned statutes range from small fines to 10 years, imprisonment; these penalties are sufficiently stringent and commensurate with punishments prescribed for other grave

crimes. The Child Care, Protection and Justice Bill, which defines child trafficking and sets a penalty of life imprisonment for convicted traffickers, remains in Cabinet and was not passed by Parliament during the reporting period.

The Malawi Law Commission continued drafting comprehensive anti-trafficking legislation to specifically outlaw all forms of human trafficking.

In 2008, the government used laws against child labor, kidnapping, and profiting from prostitution to convict trafficking offenders; as in past years, the majority of trafficking cases involved forced child labor in the agricultural sector. According to the Ministry of Labor, the government conducted at least 24 such child labor trafficking investigations and prosecuted three cases under the Employment Act in 2008. A court in Mchinji district sentenced a man to eight years, imprisonment for trafficking children for agricultural labor. A Mchinji tobacco farm employee received a sentence of two years, imprisonment for his participation in child labor trafficking. A Kasungu district court sentenced a man to two years, imprisonment for attempting to sell his 17-year old daughter into slavery for \$700. Most other offenders, however, received a warning for the first offense and a small fine for subsequent violations. The Ministry of Labor reported the out-of-court settlement of at least 13 possible trafficking cases for payment of back wages and repatriation costs. Responding to the trafficking of young Burundian girls for prostitution, a Malawian court convicted two Burundian nationals for profiting from prostitution; they received fines rather than prison sentences. In 2008, the government deported a Zimbabwean sex trafficking victim when her temporary residency status expired, resulting in the dismissal of the court case against the Malawian truck driver who trafficked her to Malawi. The Anti-Corruption Bureau did not provide information on the status of its 2007 investigation into two complaints of government corruption relating to trafficking.

#### Protection

Malawi depends heavily on foreign donors and NGOs to fund and operate most of the country's anti-trafficking programs, limiting the government's discretion in programming and placement of resources. The government funds and operates a social rehabilitation drop-in center in Lilongwe for victims of trafficking and gender-based violence, but does not maintain records specifically on trafficking victims receiving assistance or identify trafficking victims among the center's clients. The government provided shelter and legal assistance to one identified Zimbabwean trafficking victim in 2008. Using established procedures, district and local officials ) police, social welfare officers, and labor officers ) also referred victims to various NGO-run facilities that provided protective services and, in some districts such as Mchinji, facilitated their return to their home districts. There were no protective services available to Malawian trafficking victims returning from other countries. Police stations throughout the country housed victim support units to respond to gender-based violence and trafficking crimes. These units provided limited forms of counseling and, in some places, temporary shelter, though their capacity to identify and assist victims varied greatly among stations. Inter-ministerial district child protection committees monitored their districts for suspicious behavior and reported suspected trafficking cases to police and social welfare officers.

During the reporting period, the Ministry of Women and Child Development trained 289 volunteer community child protection workers to recognize child victims of all forms of exploitation, including trafficking. In early 2009, it began the process of converting these volunteer positions into paid positions within the ministry. The government allocated \$176,056 to the Child Labor Control Unit for conducting inspections in 2008. The government encouraged victims, participation in the investigation and prosecution of trafficking crimes and did not inappropriately incarcerate, fine, or otherwise penalize victims for unlawful acts

committed as a direct result of being trafficked. Government officials indicated that foreign victims were usually granted temporary residency status; the length of courts proceedings, however, sometimes exceeded the duration of this status, resulting in deportation and dismissal of cases against alleged traffickers.

## Prevention

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The government sustained its efforts to prevent human trafficking in 2008. Child trafficking issues fall under the purview of both the National Steering Committee on Orphans and Vulnerable Children and the National Steering Committee on Child Labor, which were created to provide policy guidance and coordinate the government's engagement on children's issues. Most districts have a district child labor committee, a district orphan and vulnerable child committee, and a district child protection committee, all of which have responsibility for trafficking issues. There is significant overlap and inadequate communication and coordination among these committees. The effectiveness of these committees in preventing child trafficking during the reporting period varied widely and was often dependent on the capacity of the individuals employed or their partnership with NGO- or foreign-funded projects in the vicinity. The government and UNICEF continued a child rights information campaign called &Lekani8 or &Stop!8 that included billboards, bumper stickers, newspaper ads, and radio programs which provided messages against trafficking, child labor, child sexual exploitation, and commercial sexual exploitation. Through the National Aids Commission's Action Framework on HIV/AIDS Prevention, the government also provided community sensitization on the dangers of commercial sexual exploitation and attempted to reduce the demand for commercial sex acts. The Malawi Defense Force has a zero tolerance policy on human trafficking and provided training on human rights, child protection, and the elimination of sexual exploitation to its nationals deployed abroad as part of peacekeeping missions.

19. Post may wish to deliver the following points, which offer technical and legal background on the TIP Report process, to the host government as a non-paper with the above TIP Report country narrative:

(begin non-paper)

-- The U.S. Congress, through its passage of the 2000 Trafficking Victims Protection Act, as amended (TVPA), requires the Secretary of State to submit an annual Report to Congress. The goal of this Report is to stimulate action and create partnerships around the world in the fight against modern-day slavery. The USG approach to combating human trafficking follows the TVPA and the standards set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (commonly known as the "Palermo Protocol"). The TVPA and the Palermo Protocol recognize that this is a crime in which the victims, labor or services (including in the "sex industry") are obtained or maintained through force, fraud, or coercion, whether overt or through psychological manipulation. While much attention has focused on international flows, both the TVPA and the Palermo Protocol focus on the exploitation of the victim, and do not require a showing that the victim was moved.

-- Recent amendments to the TVPA removed the requirement that only countries with a "significant number" of trafficking victims be included in the Report. Beginning with the 2009 TIP Report, countries determined to be a country of origin, transit, or destination for victims of severe forms of trafficking are included in the Report and assigned to one of three tiers. Countries assessed as meeting the "minimum standards for the elimination of severe forms of trafficking" set forth in the TVPA are classified as Tier 1. Countries assessed as not fully complying with the minimum standards,

but making significant efforts to meet those minimum standards are classified as Tier 2. Countries assessed as neither complying with the minimum standards nor making significant efforts to do so are classified as Tier 3.

-- The TVPA also requires the Secretary of State to provide a "Special Watch List" to Congress later in the year. Anti-trafficking efforts of the countries on this list are to be evaluated again in an Interim Assessment that the Secretary of State must provide to Congress by February 1 of each year. Countries are included on the "Special Watch List" if they move up in "tier" rankings in the annual TIP Report -- from 3 to 2 or from 2 to 1 ) or if they have been placed on the Tier 2 Watch List.

-- Tier 2 Watch List consists of Tier 2 countries determined: (1) not to have made "increasing efforts" to combat human trafficking over the past year; (2) to be making significant efforts based on commitments of anti-trafficking reforms over the next year, or (3) to have a very significant number of trafficking victims or a significantly increasing victim population. As indicated in reftel B, the TVPRA of 2008 contains a provision requiring that a country that has been included on Tier 2 Watch List for two consecutive years after the date of enactment of the TVPRA of 2008 be ranked as Tier 3. Thus, any automatic downgrade to Tier 3 pursuant to this provision would take place, at the earliest, in the 2011 TIP Report (i.e., a country would have to be ranked Tier 2 Watch List in the 2009 and 2010 Reports before being subject to Tier 3 in the 2011 Report). The new law allows for a waiver of this provision for up to two additional years upon a determination by the President that the country has developed and devoted sufficient resources to a written plan to make significant efforts to bring itself into compliance with the minimum standards.

-- Countries classified as Tier 3 may be subject to statutory restrictions for the subsequent fiscal year on non-humanitarian and non-trade-related foreign assistance and, in some circumstances, withholding of funding for participation by government officials or employees in educational and cultural exchange programs. In addition, the President could instruct the U.S. executive directors to international financial institutions to oppose loans or other utilization of funds (other than for humanitarian, trade-related or certain types of development assistance) with respect to countries on Tier 3. Countries classified as Tier 3 that take strong action within 90 days of the Report's release to show significant efforts against trafficking in persons, and thereby warrant a reassessment of their Tier classification, would avoid such sanctions. Guidelines for such actions are in the DOS-crafted action plans to be shared by Posts with host governments.

-- The 2009 TIP Report, issuing as it does in the midst of the global financial crisis, highlights high levels of trafficking for forced labor in many parts of the world and systemic contributing factors to this phenomenon: fraudulent recruitment practices and excessive recruiting fees in workers, home countries; the lack of adequate labor protections in both sending and receiving countries; and the flawed design of some destination countries, "sponsorship systems" that do not give foreign workers adequate legal recourse when faced with conditions of forced labor. As the May 2009 ILO Global Report on Forced Labor concluded, forced labor victims suffer approximately \$20 billion in losses, and traffickers, profits are estimated at \$31 billion. The current global financial crisis threatens to increase the number of victims of forced labor and increase the associated "cost of coercion."

-- The text of the TVPA and amendments can be found on website [www.state.gov/g/tip](http://www.state.gov/g/tip).

-- On June 16, 2009, the Secretary of State will release the ninth annual TIP Report in a public event at the State Department. We are providing you an advance copy of your country's narrative in that report. Please keep this



information embargoed until 10:00 am Washington DC time June 16. The State Department will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 EDT.

(end non-paper)

¶10. Posts should make sure that the relevant country narrative is readily available on or through the Mission's web page in English and appropriate local language(s) as soon as possible after the TIP Report is released. Funding for translation costs will be handled as it was for the Human Rights Report. Posts needing financial assistance for translation costs should contact their regional bureau's EX office.

¶11. The following is press guidance provided for Post to use with local media.

Q1: What progress has Malawi made in the last year?

A: The government conducted at least 24 child labor trafficking investigations and prosecuted three cases under the Employment Act in 2008. For example, a court in Mchinji district sentenced a man to eight years, imprisonment for trafficking children for agricultural labor. The government provided shelter and legal assistance to one identified Zimbabwean trafficking victim. The government funded and operated a rehabilitation drop-in center in Lilongwe for victims of trafficking and gender-based violence, though shelter staff did not screen for trafficking victims among the center's clients. District and local officials referred victims to various NGO-run facilities that provided protective services and, in some districts such as Mchinji, facilitated their return to their home districts. During the reporting period, the Ministry of Women and Child Development trained 289 volunteer community child protection workers to recognize child victims of all forms of exploitation, including trafficking.

Q2: What can Malawi do to further the fight against trafficking in persons?

A: While the government incrementally improved its efforts to identify victims and bring trafficking offenders to justice, the largely inconsequential punishments meted out to convicted traffickers during the reporting period demonstrated a continued lack of understanding of the seriousness of human trafficking crimes on the part of judicial and other government officials. Most other violators received a warning for the first offense and a small fine for subsequent violations. For example, in response to the trafficking of young Burundian girls for prostitution, a Malawian court convicted two Burundian nationals for profiting from prostitution; they received fines rather than prison sentences.

To advance its anti-trafficking efforts, the Government of Malawi could: provide additional training to judges, prosecutors, and police ) particularly those working near border areas ) on how to identify, investigate, and prosecute trafficking cases utilizing existing laws; pass and enact comprehensive anti-trafficking legislation; expand the existing focus on protecting victims of child labor trafficking to include children exploited in domestic servitude or prostitution; and institute a system to compile data on cases investigated and prosecuted and victims assisted throughout the country.

¶12. The Department appreciates posts, assistance with the preceding action requests.

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